

An Undergraduate Option for Legal Education

By

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Table of Contents

Introduction.....	1
I. Describing the Proposal.....	5
II. Reducing the Cost of Legal Services	7
A. Legal Services as a Competitive Market.....	8
B. The Cost of Law School Influences the Cost of Legal Services	12
C. Calculating the Cost Imposed by Graduate Law School.....	16
III. Improving the Quality of Legal Services.....	20
A. Undergraduate Degree Programs are the Norm in the Rest of the World	21
B. The Provision of Legal Services in American History	26
C. Undergraduate Option Should Help Aggregate Quality	30
D. Dynamic Effects of Introducing an Undergraduate Model.....	34
1. Increasing Diversity in the Legal Profession	34
2. More Experience in the Marketplace	36
3. Cheaper Mistakes and Greater Career Mobility	37
4. Improving the Quality of Law School	39
IV Why Not License Everyone to Practice Law.....	42
Conclusion	45

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Introduction

For many potential lawyers, obtaining a law degree is no longer worth it. This development impedes access to justice and harms those who depend on the assistance of lawyers. In the last twenty-five years the cost of a law degree has increased at twice the rate of inflation.¹ Graduates of public law schools leave with an average of more than \$75,000 in debt, while their private school counterparts take on an average of over \$125,000.² It is increasingly common for law school graduates to owe in excess of \$100,000 upon graduation, and the recent economic crisis in the market for lawyers has highlighted a number of individuals laboring under debt loads that exceed \$200,000.³ By the time many students graduate from law school they will have incurred tuition and opportunity costs that approach \$300,000.⁴ Recent studies have suggested that over 40% of recent law school graduates are not earning enough to pay back the cost of legal education.⁵ Only a small handful of top graduates are obtaining the kind of high paying jobs supported by complex corporate work, while most struggle to find jobs at the median.⁶

Initially, this turn of events may not seem to present a problem for anyone but recent law school graduates. After all, no one is forcing them to go to law school, and if the payoff of a legal education does not justify the cost, they can make the rational choice not to enroll. When potential lawyers stop enrolling in law school, however, it affects those people who depend on legal services by reducing the supply of lawyers and increasing the cost of legal services.

¹ *See, infra* note 45.

² *See, infra* note 48.

³ *See, infra* note 49; 44.

⁴ *See* note 58 and accompanying text.

⁵ *See* notes 50-53 and accompanying text.

⁶ *See* notes 52-53.

It is true that the current glut of lawyers may depress the cost of legal services in the short run. But in the long run the cost of legal education is passed on to the price of legal services, because a rational decision maker will not choose to go to law school unless he can expect to recover the cost of a law degree by practicing law. When law school graduates are earning more than the sum of their tuition and opportunity cost, more people will choose to go to law school. When law school graduates are earning less than the sum of their tuition and opportunity cost, fewer people will choose to go to law school.

Thus, the cost of legal education affects the cost of legal services. One scholar has suggested that the current cost of legal education may impose from \$18,000 to \$65,000 per year on the cost of legal services that a lawyer provides.⁷ Raising the cost of legal services by requiring graduate education harms allocative efficiency in several ways. First, many consumers would benefit from existing legal services, but are unable to obtain them at the price imposed by the graduate legal education requirement. Unable to obtain them, these consumers expend resources on the next best—but still inferior—alternative, relying on their own view of the law or that of someone else who is has not been legally educated. Particularly for the poor and middle class, the current state licensing requirements often force a citizen to obtain a graduate trained lawyer or forgo legal representation all together.⁸

Second, there are likely to be many types of legal services that do not exist because lawyers would not find them profitable to produce under the existing cost structure. This condition slows down innovation, and pushes lawyers to dedicate their time to producing the next best—but still inferior—alternative. Third, even services that are currently being provided

⁷ See note 60 and accompanying text.

⁸ Some but not all who are unable to hire a lawyer in the marketplace may later be provided one on a pro bono basis.

and purchased can harm allocative efficiency when the price of these services is above the competitive price.

In this essay we argue that the states should license individuals to practice law after they have received a four year undergraduate law degree, undergone one year of paid apprenticeship and passed the bar exam. We do not argue that this method of training lawyers should replace the existing JD model, but rather that it should exist as an alternative. In the long run, this proposal would lower the cost of many legal services. The result would be a savings not only to consumers, but also to society in avoiding the deadweight loss of over-trained attorneys.

Further, this proposal would not result in a decrease in the quality of legal services, but more likely would lead to an increase in quality. It is not at all clear that an undergraduate education followed by a year of apprenticeship would result in lawyers of lesser capacity. Other developed nations permit undergraduate education of lawyers and they are not obviously less well served by such graduates. The undergraduate option should attract many people who have had an interest and aptitude for law from an early age. Such ‘born’ lawyers would likely be very capable.

But from a policy perspective, the focus should not be simply the quality of particular undergraduate lawyers, but on the aggregate quality of services enjoyed by consumers. When the cost of legal services increases, it prevents segments of the market from receiving any level of quality at all. If a lower cost model enabled the provision of a large amount of additional services, the total amount of quality being received by consumers could increase—even if accompanied by an overall decrease to average quality.

States that licensed undergraduate lawyers could also expect to see other beneficial changes in the legal profession. By offering a more inclusive low-cost model of education these

states could expect to see an increase in the diversity of the legal profession as socioeconomically disadvantaged groups of minorities gained greater access to legal education. By reducing the timeline of legal education, these states could expect to see further diversity gains as more women had the opportunity to pursue a law degree prior to starting a family or raising children. By lowering the barriers to entry, states would increase mobility into and out of the profession. For instance, lawyers would have more time and resources to pursue education and training in other fields if they decide, after experiencing it, to exit the legal profession. Further, increased mobility in and out of the profession should lead to an increase in the percentage of lawyers who are satisfied with their career, which may in turn lead to productivity gains.

Licensing a model of undergraduate legal education and apprenticeship would also have other institutional benefits.. For law firms, the cost of hiring would decrease. Instead of making an expensive investment in a new lawyer based on a short summer recruiting season, the law firm would be able to employ the potential lawyer as an apprentice over the course of a year. This apprentice period would allow firms to evaluate potential hires over a longer period of substantive work for a relatively low cost. Firms would make fewer hiring mistakes, thereby saving on hiring costs long term.

Legal education would also benefit from the competition that the undergraduate model would introduce. Currently, there is very little innovation in the curriculum and structure of graduate law schools. The success of an undergraduate model would force graduate schools to respond by reviewing their curriculum and making changes that provided value to prospective students.

Our proposal reflects an important insight of Professor Larry Ribstein, the scholar to whom this symposium has been dedicated. In his article, *Practicing Theory, Legal Education for the Twenty-First Century*, Professor Ribstein assailed the uniformity that the ABA's licensing regime had imposed on legal education.⁹ Uniformity raises costs, because it limits the options from which students and ultimately consumers can benefit. It also inhibits experimentation and improvement in the delivery of educational services. Professor Ribstein was largely talking about the uniformity imposed by standards for the three-year graduate degree.¹⁰ We extend his objection to uniformity by offering an educational alternative to a graduate degree in law.

Part I of this essay will briefly describe the content and structure of the undergraduate and apprenticeship model that we propose. Part II will explain how lowering the cost of legal education translates into a reduction in the price of legal services. Part III will argue that an undergraduate and apprenticeship model poses no threat to the quality of legal services, and in fact presents an opportunity for quality increases. Part IV will discuss why our proposal is a good alternative to complete deregulation of the legal profession.

I. Describing the Proposal

Our proposal calls for the licensing of lawyers that have completed a program of legal education that consists of a four-year undergraduate degree in law combined with a one-year legal apprenticeship.¹¹ We envision the undergraduate law program to be structured in a similar manner to current undergraduate professional programs such as those offered in business. Typically, those programs require approximately 120 credit hours of coursework to be completed over four years, with the credit hours split roughly in half between the professional degree and

⁹ Larry Ribstein, *Practicing Theory Legal Education for the Twenty First Century*, IOWA L. REV. 1649, 1674 (2011).

¹⁰ *Id.*

¹¹ This essay addresses only the educational component of state licensing requirements. We do not address the additional requirements which typically include the bar examination or the character and fitness examination.

general liberal arts.¹² Thus, an undergraduate law degree would consist of approximately two years (60 credit hours) of liberal arts courses and two years (60 credit hours) of law coursework. The first two years of liberal arts coursework would incorporate some legal prerequisites, such as an introduction to law course as well as some “law and” courses that integrate law and other social disciplines. The third year would consist of core doctrinal law courses, much like the current 1L year of law school does. The final year would have the student choose higher level electives which would allow them to explore specialized areas of law or to study core doctrinal areas at greater depth.

Typically, law schools require approximately 85 credit hours to be completed over three years.¹³ By requiring 60 hours of liberal arts and 60 hours of legal coursework the undergraduate program would preserve both a substantial amount of undergraduate liberal arts education, while also preserving the entirety of legal education that occurs during the first two years of graduate law school (approximately 56 hours). Of course, law itself provides a window into the history and the political thought and argument of the West. A degree in law thus would contribute as much or more to liberal arts education as a degree in business or many others offered by colleges today.

Some of the foundational courses in the first two years would contribute to legal learning as well and thus the total amount of time devoted to law would be somewhat greater than that in the first two years of law school. The only graduate coursework that would be eliminated is that

¹² See, e.g., Indiana University Kelly School of Business, which requires completion of 124 credit hours of coursework. A minimum of 48 hours must be completed in business and economics courses, while a minimum of 62 hours must be completed outside the schools of business and economics. Kelly School of Business, <http://www.kelley.iu.edu/ugrad/academics/curriculum.cfm> (last visited Apr. 5, 2011).

¹³ See, e.g., Northwestern University School of Law, which requires completion of 84 hours of law coursework. Northwestern University School of Law, <http://www.law.northwestern.edu/academics/jd/> (last visited Apr. 14, 2011).

which occurs during the 3L year of graduate law school; coursework which many find to be of debatable value.¹⁴

The training that law students currently receive during their 3L year of law school would be replaced by a one year practical apprenticeship. During this paid apprenticeship, future lawyers would receive training in practical legal skills such as legal writing, oral argument, client counseling, and case management, as well as substantive legal work and real world interaction with the rules of civil procedure, evidence, and the like. After the apprenticeship, they would have to sit and pass the same bar exam that graduate trained lawyers take in order to be licensed to practice law independently.

The timeline of legal education and training would be reduced from the current seven years to five, and would include a year of paid practical experience. Creating an undergraduate major in law would allow for greater integration with the rest of the university and more opportunities for cross-disciplinary instruction and education. Further, lawyers with an undergraduate law degree could augment it later in their careers with a specialized graduate LLM, much like an undergraduate business degree is later paired with a graduate MBA.

We now turn to a discussion of how such an undergraduate option should reduce the cost of legal services.

II. Reducing the Cost of Legal Service

Legal services are expensive. There is no mystery about this fact. Lawyers are highly educated, highly trained professionals that provide a valuable service that is highly in demand. When one thinks of many situations that call for a lawyer—felony criminal trials with the threat of imprisonment, the breakdown of a vital business deal, the protection of a constitutional

¹⁴ See *infra* notes xx and accompanying text.

right—the value of legal services can seem unbounded. Regardless of their value, however, the price of legal services is not unbounded. In a competitive market the price of a service is a function of the cost of providing the service and the price at which consumers demand it. In such a market, a firm will be willing to provide service at any price that exceeds the marginal cost of providing it.¹⁵ In the market for legal service, where many lawyers are competing for clients, lawyers should be willing to offer their services for a fee that approximates the marginal cost of providing them. If the marginal cost can be decreased, the price at which lawyers are willing to offer their services will also decrease. This section describes how allowing undergraduate trained lawyers to practice law will lead to a decrease in the cost of some legal services. It first shows that the market for legal services is indeed responsive to the forces of supply and demand. It then describes specifically how an undergraduate law degree translates into lower priced legal services through a reduction in the cost of legal education.

A. Legal Services as a Competitive Market

Before applying the economic framework for competitive markets to the market for legal services, it is worth asking whether the market for legal services is a competitive one. In a market with perfect competition: 1) there are numerous buyers and sellers, no one of which can individually impact market price, 2) each market participant has perfect information, and 3) there are no artificial barriers to entry.¹⁶ In the market for legal services, there are certainly a large

¹⁵ RICHARD A. POSNER, *ECONOMIC ANALYSIS OF LAW* 274-75 (6th ed., 2003) (describing how producers will continue to sell as long as marginal revenue exceeds marginal cost).

¹⁶ PHILLIP AREEDA, LOUIS KAPLOW, & AARON EDLIN, *ANTITRUST ANALYSIS: PROBLEMS, TEXT, & CASES* 5 (6th ed., 2004)

A market economy will be perfectly competitive if the following conditions hold: 1) Sellers and buyers are so numerous that no one's actions can have a perceptible impact on the market price, and there is no collusion among buyers and sellers. 2) Consumers register their subjective preferences among various goods and services through market transactions at fully known market prices. 3) All relevant prices are known to each producer, who also knows of all input combinations technically capable of producing any specific combination of outputs and who makes input decisions solely to maximize profits. 4) Every

number of buyers and sellers. Although the market can be segmented—large corporate clients engaged in complex litigation are seeking a different service than an individual purchasing a home—in all but the most unique and complex segments there are likely to be a large number of lawyers and a large number of clients in need of legal service.

As to information, buyers and sellers of legal services operate with less than perfect information. It is likely that lawyers, the sellers of legal services, will have fairly good information. They know how much it costs them to provide their service, including the opportunity cost of foregoing the next most attractive use of their time. While due to factual complexity or less than full disclosure by a client it may not be possible for a lawyer to estimate exactly what it will cost to provide service to each client, the ability to forecast likely improves with experience. Additionally, in many cases, the lawyer is able to pass additional costs on to the client through an hourly billing arrangement. From the client-buyer perspective, however, information is likely to be more difficult to come by.¹⁷ Unlike the lawyer, most clients will have only occasional interaction with the legal system. Thus, clients are less likely to develop the ability to accurately forecast the cost of legal service.¹⁸ Legal outcomes depend on a variety of factors external to the quality of the lawyer, including: the individualized facts of the case or matter, the law in question, the strength of the adversary, the judge and forum in which a case is litigated, and many others. To a client it may be difficult to understand and evaluate how these

producer has equal access to all input markets and there are no artificial barriers to the production of any product. *Id.*

¹⁷ Baldwin et al., *Regulating Legal Services: Time for the Big Bang?*, 67 MODERN L. REV. 787, 792 (2004).

Buyers of legal services can be at a disadvantage compared to suppliers. In general suppliers are far better informed about legal services and prices, especially than inexperienced individual consumers and small business clients. This information asymmetry can lead to a higher dispersion of prices, and can protect excess profits among providers. In addition, a solicitor acting both as the recommender and supplier of a service faces a moral hazard about how much charged work should be carried out, and many consumers are not well placed to judge the eventual quality of service provided. *Id.* See also *infra* notes 145-147.

¹⁸ This certainly does not apply to all clients. Corporate clients that utilize lawyers and law firms for a variety of services on a regular basis, for instance, are likely quite good at estimating the cost of the legal services and evaluating the quality of the lawyers that provide them.

factors function together and therefore to isolate the quality of service provided by the lawyer. Since the service provided will vary somewhat depending on both the lawyer, the legal issue, and factual circumstances facing the client, it is more difficult for inexperienced clients to compare cost and quality. This circumstance exists prior to experiencing the service provided by the lawyer, and may even remain after service is provided. Thus information is imperfect, and information asymmetry is likely to exist between lawyer and client. This information disparity is in fact proffered as the primary justification for allowing bar associations to regulate training and certification requirements for lawyers.

Barriers to entry—the third factor—are largely the subject of this essay¹⁹ Although there are no natural barriers to entering the legal profession, bar associations impose a number of them, including: education requirements, a character and fitness evaluation, examinations on ethics and state law, and restrictions on many types and modes of advertising. The education requirements impose a cost to entering the legal profession. The examinations exclude all attorneys that does not meet the bar's specified level of competence, and because the exams are curved they allow the bar to decide how many attorneys to admit in a given year.

Moreover, restrictions on advertising make it more costly for lawyers to attract clients. Without advertising, lawyers have to rely on word of mouth and other less effective or methods of informing potential clients why they should choose to hire them. The regulations of state sponsored bar associations create significant barriers to entry to the legal profession.

Thus there is not perfect competition in the market for legal services. While there are a likely to be a large number of buyers and sellers within each market segment, there is also likely

¹⁹ Aidan R. Vining & David L. Weimer, *Information Asymmetry Favoring Sellers: A Policy Framework*, 21 POL'Y SCI. 281, 297 (1988) ("A major disadvantage of licensure requirements, especially when the professions themselves set the standards, is that they may be used as a barrier to entry to restrict competition."); Howard Beales et al., *The Efficient Regulation of Consumer Information*, 24 J.L. & ECON. 491, 505 (1981) ("[Professional licensing] can have the power to deter competition by arbitrarily preventing new entry and by setting inefficient standards.").

to be an information asymmetry between lawyer and client, and state bar regulations impose barriers to entry. Because of these conditions, one might be tempted to assume that that economic principles derived from competitive markets have no place in the market for legal services. Despite the fact that competition in the legal service market is not perfect, however, there is substantial evidence that the market in large part responds to the forces of supply and demand. Several empirical studies of the legal services market have come to this conclusion.

In an article about the effect of advertising on the cost and quality of legal services, Timothy Muris and Fred McChesney offered empirical evidence that when legal clinics were able to achieve cost reductions, that price decreases were passed on to clients.²⁰ Moreover, after advertising restrictions on English lawyers were reduced, vigorous competition was evident. Not only were clients inclined to phone multiple lawyers to request price quotations, but lawyers posing as clients called their competition to get the same information.²¹ Interviews with English lawyers revealed that competition in the market for legal services was indeed causing downward price pressure.²² Another empirical study after examining a set of factors, including case characteristics, party interactions, lawyer qualifications, and party goals, found that the price of legal services is mainly a product of market forces.²³ Other researchers have noted that clients do consider price when determining which lawyer to employ, and that lawyers who are not proactive in reducing the cost of providing legal service lose clients to lower cost firms or to lay

²⁰ Timothy J. Muris & Fred S. McChesney, Advertising and the Price and Quality of Legal Services: The Case for Legal Clinics, 4 AM. B. FOUND. RES. J. 179, 195-96 (1979) (citing to evidence that clinics who were able to achieve economies of scale by doing large volumes of work in particular areas of law reduced the prices charged for these services).

²¹ Alan Patterson et al., *Competition and the Market for Legal Services*, 15 J.L. SOC'Y 361, 363 (1988).

²² *Id.* Patterson quotes several responses from a phone survey of English lawyers, including: "competition in this field is suicidal," and "people are quoting daft prices." *Id.*

²³ Herbert M. Kritzer et al., *Understanding the Costs of Litigation: The Case of the Hourly-Fee Lawyer*, 9 AM. B. FOUND. RES. J. 559, 589 (1979) ("[R]ates do not appear to be a function of case-related factors (e.g., stakes, complexity, participant goals), and they appear to be minimally related to lawyer skill, qualifications, and the like. Overall, the analysis clearly suggests that hourly rates are, by and large, a function of what the market will bear.").

professionals who can do it more cheaply.²⁴ An article on English lawyers summarized that while extensive regulation constrained the price mechanism, it did not replace it, and that price was largely influenced by supply and demand.²⁵ As these studies indicate, the market for legal services is shaped by competitive forces. Further, competition becomes even more evident as regulatory restrictions are eliminated or reduced—the solution this essay argues for via a reduction in the education requirement.

Of particular interest is the ample evidence that when cost reduction is introduced into the legal market it leads directly to price reduction. Muris and McChesney found that cost reductions in legal clinics led to a decrease in the price of some legal services by more than 50%.²⁶ Further, they noted that as “the last of the cottage industries,” legal service was ripe for further cost reductions.²⁷ The legal profession is subject to “the true iron law of wages,” that “wages paid by the producer will be borne ultimately by the purchaser,” and that lawyers who hope to remain competitive must continue to drive down costs which are then passed on to clients.²⁸

²⁴ Theodore Voorhees, *Paralegals: Should the Bar Employ Them?*, 24 VAND. L. REV. 1151, 1157 (1971) (“Every day it becomes more apparent that law offices which are not taking steps to reduce the cost of legal services are driving their clients to other firms with lower hourly rates or to lay specialists who operate outside law offices without lawyer supervision.”).

²⁵ R. Baldwin et al., *supra* note 17, at 791-92. Turning to regulation and the price mechanism, changes in supply and demand generally lead to a shift in prices which brings these forces back into balance. Although regulation is pervasive in markets for legal services, the price mechanism still operates, constrained rather than replaced by regulation. In consequence, supply and demand still influence prices, and in many areas the price mechanism operates in standard form. That is to say, firms offering legal services set prices subject to the constraints placed upon them by their customers’ willingness to pay and competitive pressures. *Id.* at 791.

²⁶ Muris & McChesney, *supra* note 20, at 195-96. They note that clinics were able to achieve cost reductions by achieving economies of scale on volume services that were enabled by reduced restrictions on advertising. Economies of scale were realized through specialization, systems management, increased use of paralegals, and substitution of capital for labor. *Id.* at 185-88.

²⁷ *Id.* at 207.

²⁸ Elliot E. Cheatham, *The Legal Paraprofessional: An Introduction*, 24 VAND. L. REV. 1077, 1079-80 (1971). “The law [of wages] applies to steel, to homes, and to transportation; it applies no less to legal services.” *Id.* at 1080.

Many scholars of the legal services market have emphasized that the use of low cost paralegals and lay professionals has led directly to lower priced legal services.²⁹ Smaller firms and independent practitioners were able to compete with larger law firms only by aggressively driving down the cost of their overhead and employing less expensive attorneys. Further, a recent study has shown that incomes at smaller law firms have been declining in real terms.³⁰ These cost reductions allowed small firms to reduce the price of legal service to their clients to less than two-thirds the price charged by large law firms.³¹ This evidence establishes that not only is the market for legal services a competitive one, but that reductions in the cost of providing legal services are passed on to clients in the form of lower prices.

Professor Gillian Hadfield has argued that the legal services market substantially deviates from perfect competition but that artificial barriers—presumably including those of legal education—play a small role in restricting the supply.³² While Professor Hatfield’s argument may indeed hold true for some sectors of the market, there are several good reasons to believe that many more sectors are largely shaped by competitive forces. First, while the market for legal services is not a model of perfect competition, we have described evidence showing that does respond to competition. In particular, lower priced labor leads to lower prices. Second, Professor Hadfield’s argument for the relative unimportance of artificial regulatory barriers relies on the claim that prices have been going up in the United States while artificial barriers have

²⁹ See, e.g., *id.* at 1080 (savings achieved through the use of paralegals are passed directly to the client in the form of lower hourly rates); *id.* (law clerks in England fulfill a similar role in reducing the cost of legal service); Voorhees, *supra* note 24, at 1152-53 (noting that law firms have begun to hire non-lawyers, including accountants and other lay professionals, and that the cost savings achieved through the use of these professionals have been passed on in the form of lower charges to clients); *id.* at 1157-58 (stating that the use of paralegals has become a necessary step in achieving a competitive price structure); Louis M. Brown, *Preventative Law and the Legal Assistant*, 24 VAND. L. REV. 1181, 1182 (1971) (arguing that specialization lowers the cost of legal service and reduces the expense to clients); Lester Brickman, *Implications of Paraprofessionalism*, 24 VAND. L. REV. 1213, 1215 (1971) (suggesting that use of paraprofessionals increases access to legal services to the poor and middle class).

³¹ Voorhees, *supra* note 24, at 1162.

³² Gillian K. Hatfield, *The Price of Law: How the Market for Lawyers Distorts the Justice System*, 98 MICH. L. REV. 953, 995, 1002-1003 (2000).

been going down.³³ It is true that restriction on advertising and other methods of competition have been declining. Restrictions on entry through the imposition of educational requirements, however, have been increasing, because the cost of legal education has been rising much faster than the rate of inflation.³⁴

We agree with Professor Hatfield that the superstar effect, the complexity of much of law, and the cognitive component of legal talent, are important constraints on price competition. But these constraints have their greatest effect on the very high end of the legal market, such as in the defense of high government officials, cutting-edge mass tort litigation, and so-called bet the company lawsuits, two of which Professor Hatfield uses as paradigm examples of legal work in her article.³⁵ It is much less clear that these factors have as substantial effect in more routine legal work for small businesses and middle class and poor individuals.

For instance, the very large premiums that accrue to the best in the profession are not relevant to much of the market. Most people do not need and could never afford superstar lawyers. And while cognitive ability is a constraint, even that constraint may be less fixed in the long run with the development of new technology and organizational monitoring. These developments mean that much of law could be delegated to lower cost practitioners of lesser ability who could offer a variety of legal services to a variety of clients.

Moreover, the evidence we have is consistent with the view that the rise in number of lawyers over the last decades has led to declining costs at the lower end of the market. While we do not have substantial statistics on fees actually charged at the lower end of the legal profession, we do know that incomes have been declining for attorneys in “small law” in real terms.³⁶ In our

³³ *Id.* at 1003.

³⁴ See *infra* note 42.

³⁵ Hatfield, *supra* note x, at 953-954.

³⁶ See Benjamin H. Barton, *A Glass Half Full Look at Changes in the Legal Profession*, (forthcoming).

view, they would likely decline further if the undergraduate option were permitted. Lawyers after all are college graduates. With educational debts that they cannot discharge they may exit the legal profession for other more lucrative work open to the well-educated if their fees continue to fall beyond that which allow them to comfortably service the heavy debts often necessitated by graduate school education. In contrast, lawyers who chose the undergraduate option and started on their legal career with less debt would be more willing to continue to work at job that gives them personal satisfaction and respect of being regarded as a professional.

B. The Cost of Law School Influences the Cost of Legal Services

Given that the market for legal services is competitive, we next investigate how reducing the cost of legal education reduces the marginal cost of providing legal service. Marginal cost is the additional cost incurred in providing the next unit of service. Determining what is included in marginal cost, however, depends on when marginal cost is measured. If the marginal cost of counseling a client for one hour is measured after an attorney has been practicing for several years, it will include the opportunity cost of spending one hour of his time, and may include time spent by his legal assistants and paralegals, the cost of research on Westlaw, office supplies used, or the cost of long distance phone calls. If marginal cost is measured instead at the time an attorney passes the bar exam, it may include the cost of renting an office, of purchasing a new suit, office computers, or hiring a legal assistant, in addition to the other costs described above. If marginal cost is measured even farther back, when the future attorney has just received his undergraduate degree, it will include the cost of a graduate law degree and the opportunity cost of not working for three years, in addition to the other costs described above. As this example

illustrates, over a long enough time period, marginal cost includes all costs incurred to provide the service. At that point marginal cost equals total cost.

When marginal cost is measured prior to embarking on graduate legal education, that a future lawyer will require a price for his services that allows him to recoup the expense of his legal education, the cost of setting up his practice, and the cost of providing service, plus a reasonable rate of return. All else being equal, a potential lawyer will decide not to begin a legal career if he observes that lawyers are not able to charge prices that generate sufficient revenue to cover the total cost of providing legal service. In this way the cost of graduate legal education limits the supply of lawyers and maintains a price floor on the cost of legal service. Although a practicing attorney would be willing to provide service for a price exceeding his marginal cost of supplying it (at this point the cost of legal education would be a sunk cost), if a future lawyer observed that prices being charged were below what was necessary to recoup the total cost, he would choose not to embark on legal education. Thus, while in the short term the cost of legal education does not necessarily impose a price floor on the cost of legal service, over the long term it does by restricting the supply of individuals that are willing to enroll in law school.³⁷

It has long been recognized that when guilds are able to impose stringent education requirements on professions that those requirements have an impact on the price of goods and services. Writing about the established trades in England in 1776, economist Adam Smith argued that requiring lengthy apprenticeships was not about ensuring quality, but was rather for the purpose of restricting competition and increasing the price that could be charged for those

³⁷ This analysis assumes that the supply and demand for lawyers is cyclical to the economy. As the economy grows over time, the demand for lawyers also grows, and a decision by potential lawyers to forgo the practice of law would lead to a future shortage of lawyers. This assumption has been employed in the study of other professions. See, e.g., Morris M. Kleiner & Robert T. Kurdle, *Does Regulation Affect Economic Outcomes? The Case of Dentistry*, 43 J.L. & ECON. 547, 553-54 (2000) (describing how an increase in licensing requirements leads to a reduction in the supply of dentists).

goods and services.³⁸ More recent studies have shown that licensing schemes which require professionals to undergo education and training raise the cost of basic and lower quality services.³⁹ While requiring mandatory education and training might decrease the cost of complex high quality services by increasing the supply of highly trained professionals, this benefit is subsidized by consumers of basic services.⁴⁰ Consumers of basic services—often the poor, small businesses, and socially disadvantaged groups—bear the cost of these regulations by paying higher prices for basic services or being forced to forgo legal assistance all together. Stringent licensing requirements can never be pareto superior, because low cost consumers always lose.⁴¹ In a 2010 study on the effect of occupational licensing requirements, Morris Kleiner and Alan Krueger found that licensing requirements raised the salaries of licensed professionals by an average of 15%.⁴² While members of the profession are likely to continue to support licensing requirements that raise the cost of entry to the profession—thereby raising the salaries of those within it—this cost is clearly passed on as a price increase to consumers.

It might be argued that there is no need to worry now that excessive regulation will drive up the legal costs at the current moment. Indeed, the current glut of lawyers may force price reductions even below the break even point that is necessary to recoup the costs of legal education. It is true that booms and busts ensure that over short-term economic cycles the

³⁸ ADAM SMITH, AN INQUIRY INTO THE NATURE AND CAUSES OF THE WEALTH OF NATIONS 99-102 (Michael Lewis ed., 2007). *See also*, Jaewoo Ryoo, *Lemons Models of Professional Labor Markets Reconsidered*, 22 E. ECON. J. 355, 360 (1996) (“Suppose, for example, that the objective of these organizations is to maximize aggregate rents received by existing members. One way to achieve that goal is to limit the number of practitioners by raising the minimum-quality standards.”).

³⁹ Carl Shapiro, *Investment, Moral Hazard, and Occupational Licensing*, 53 REV. ECON. STUD. 843, 844 (1986); Vining & Weimer, *supra* note 19, at 297 (“[Licensing requirements] may remove from the market the option of purchasing low quality but low cost goods that some consumers may prefer.”); Sidney L. Carroll & Robert J. Gaston, *Occupational Licensing and the Quality of Service*, 7 LAW & HUM. BEHAV. 139, 140 (1983) (“[L]icensing has been shown repeatedly to have an upward price effect.”).

⁴⁰ *Id.* at 847.

⁴¹ *Id.* at 856.

⁴² Morris M. Kleiner & Alan B. Krueger, *The Prevalence and Effects of Occupational Licensing* 5 (Princeton University Industrial Relations Section Working Paper No. 531, Aug. 2010), available at <http://www.irs.princeton.edu/pubs/pdfs/531.pdf>. . *see*

intersection of supply and demand may become uncoupled from the price of law school. A shortage in the supply of lawyers may temporarily become an oversupply during a recession. Information inefficiency can also create an economic reality that does not mirror expectations. Lack of employment transparency is, of course, the prime current example. If law schools give students an overly optimistic picture of future employment prospects,⁴³ some students may opt for law school despite the reality that law school is not a good investment for them.

But while these complexities complicate the short term relation between the price of a legal education and the price of legal services, there remains a longer term connection between these variables. Over the long-term, in a growing economy, setting a regulatory floor on the cost of becoming a lawyer acts as a governor on the supply of new lawyers, ultimately increasing the price of legal services. Thus, by reducing the cost of gaining a legal education, we can reduce the price of legal services in the long run.

C. Calculating the Cost Imposed by Graduate Law School

The economic downturn has highlighted how much of a cost that graduate legal education imposes. Recent articles are replete with stories of a shrinking legal job market and law school graduates struggling under the burden of debt that exceeds \$200,000.⁴⁴ These stories are not unique. Over the last 25 years, the cost of law school tuition has increased at twice the rate of inflation.⁴⁵ Since 1987, tuition at public law schools has increased 448%, while tuition at

⁴³ As many have, BRIAN Z. TAMANAHA, *FAILING LAW SCHOOLS* xx (2012)

⁴⁴ See, e.g., David Segal, *Is Law School a Losing Game?*, N.Y. TIMES, Jan. 8, 2011 (reporting that since 2008, 15,000 legal jobs have disappeared, and highlighting the stories of two unemployed law school graduates with debt exceeding \$200,000); Gerry Shih, *Downturn Dims Prospects Even at Top Law Schools*, N.Y. TIMES, Aug. 25, 2009 (reporting that in 2009, large law firm interviews had been reduced by 50%, even at top law schools, and highlighting the stories of two unemployed law students with debt exceeding \$200,000).

⁴⁵ ABA Commission on the Impact of the Economic Crises on the Profession and Legal Needs, *The Value Proposition of Attending Law School 1* (Nov. 2009), <http://www.abanet.org/lcd/legaled/value.pdf>.

private law schools has increased by 224%.⁴⁶ In 2008, the median tuition at a public law school was \$16,836 per year, while median tuition at a private law school was \$34,298.⁴⁷ The result is that the average public law school graduate is encumbered by \$71,436 in debt upon graduation, and the average private law school graduate \$91,506.⁴⁸ It has become increasingly common in the face of rising tuition for law school graduates to leave with debt loads exceeding \$100,000.⁴⁹ David Van Zandt, former dean of Northwestern University School of Law, estimates that at these rates a lawyer would need to make at least \$66,067 per year just to break even.⁵⁰ The American Bar Associations confirms that this state of affairs is not happening. In 2008, 42% of law school graduates were employed in jobs paying less than \$65,000 per year.⁵¹ Another study confirmed that while a small group of law school graduates landed big law jobs starting at \$160,000 per year,⁵² the majority of their classmates struggled to find work in the \$60,000 to \$100,000 range.⁵³

⁴⁶ Andrew P. Morris & William D. Henderson, *The New Math of Legal Education*, THE YOUNG LAWYER (Jul. 2008) Vol. 12, Num. 9 1, available at <http://www.abanet.org/yld/tyl/july08/july08.pdf>.

⁴⁷ ABA, *supra* note 45, at 1. In 2008, the tuition at Northwestern University School of Law was \$45,347. In 2009 it rose to \$47,472, and in 2010 it was \$49,744.

⁴⁸ Debra Cassens Weiss, *Average debt of Private Law Schools Grads is 125,000*, ABA JOURNAL, May 28, 2012, http://www.abajournal.com/mobile/article/average_debt_load_of_private_law_grads_is_125k_these_five_schools_lead_to_m

⁴⁹ Maimon Schwarzschild, *The Ethics and Economics of American Legal Education Today*, 17 J. CONTEMP. LEGAL ISSUES 3, 5 (2008).

⁵⁰ Analysis by Northwestern University School of Law Dean David Van Zandt (Dec. 22, 2010) (on file with author). It is worth noting that Van Zandt's analysis seems overly optimistic. In his assumptions, Van Zandt uses a discount rate of 5% to determine the amount a lawyer would need to make over 30 years to pay back the cost of his education. *Id.* The interest rate charged on federally backed grad plus loans for law school was 8.5% during the 2008-2011 period. It seems unrealistic that a private individual would view the law school investment as only requiring a 5% risk return when even lenders who are providing federally guaranteed loans are unwilling to offer them below 8.5%. It seems more likely that the discount rate required by a private individual would be quite a bit higher. For example, Herwig Schlunk estimates that the appropriate discount rate would be somewhere between 12% and 27%. Herwig Schlunk, *Mamas Don't Let Your Babies Grow Up to Be . . . Lawyers* 9-13 (Vanderbilt Law & Economics Working Paper No 09-29, Oct. 30, 2009), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1497044.

⁵¹ ABA, *supra* note 45, at 2.

⁵² 23% of law school graduates. ABA, *supra* note 45, at 2.

⁵³ Morris & Henderson, *supra* note 46, at 1.

When lawyers are unable to earn enough to pay off these massive debts the long term supply of lawyers will decrease, and the subsequent price increase will be borne by consumers of legal services; particularly consumers of basic low cost legal services. It is important to remember that the cost passed on to these consumers consists of two components. The first is the amount of tuition, in addition to the cost of books, supplies, and other materials. The second is the opportunity cost of forgoing three years of employment while attending law school. It has long been realized that lawyers consider both of these costs when setting the price at which they offer their services.⁵⁴ Next, we will attempt to quantify the magnitude of the costs being borne by consumers of legal services.

A useful picture of these costs is given in an analysis by Professor Herwig Schlunk.⁵⁵ Schlunk began his analysis by realizing that the cost of legal education is not the same for all students. Students with marginal undergraduate records are likely to have less attractive employment options than students with exceptional undergraduate performance. Thus, the opportunity cost to students who excel during their undergraduate education is likely to be higher than the opportunity cost to marginal students. Additionally, exceptional students are likely to go to higher ranked, more expensive law schools. While some of this additional cost to exceptional students is likely to be offset by scholarships or summer employment, on average the

⁵⁴ Wilmer T. Fox, *Business Methods in a Lawyer's Office*, 7 VA. L. REG. 241, 251-52 (1921).

A lawyer, too, has a large capital invested in his business. On the expensive equipment of law books and office appliances, which depreciate rapidly and which have little value except to a going concern, he should earn, without labor on his part, the customary interest return on the investment plus the annual, depreciation in his principal by reason of use and obsolescence. Besides this tangible capital, the lawyer has invested the direct and indirect cost of his education, which is just as much invested capital as is that placed in the factory by the manufacturer. The direct cost of the education is the tuition charges, board, clothing, railway fares and expense of books. 'The indirect cost should include the salary lost during the years in college (less the cost of board and clothing which has already been charged), and also the difference between the usual salary commanded by young men and that made by the lawyer during the early years of his practice, with interest on both direct and indirect cost to the time when the lawyer's income becomes sufficient to pay a return on his investment, and pay him an adequate salary for each day's labor. *Id.*

⁵⁵ Herwig Schlunk, *Mamas Don't Let Your Babies Grow Up to Be . . . Lawyers* (Vanderbilt Law & Economics Working Paper No 09-29, Oct. 30, 2009), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1497044.

total cost of graduate legal education is likely to be higher for exceptional students. Therefore, Schlunk performed an analysis on three separate students with varying talent and undergraduate performance. The first student would forgo a salary of \$40,000 per year to attend a middle of the pack law school where tuition and fees total \$113,000 over three years.⁵⁶ The second student would forgo a salary of \$55,000 per year to attend a law school just outside the top twenty where tuition and fees total \$128,000 over three years.⁵⁷ The third student would forgo a salary of \$70,000 per year to attend a top twenty law school where tuition and fees total \$140,000 over three years.⁵⁸

After factoring in the effect of forgone annual raises, income taxes, and summer wages during law school, Schlunk calculated the total cost (tuition and fees + opportunity cost) of attending law school for his three candidates. Graduate legal education would cost the first student \$201,853, the second student \$242,424, and the third student \$279,408.⁵⁹ These numbers indicate that the cost of graduate legal education imposes a cost on legal services of more than \$200,000 and in some cases approaches \$300,000. By assuming a legal career of 35 years and a discount rate of between 12% and 27%, Schlunk calculated that the first graduate would require an annual premium to repay the cost of his education of between \$18,205 (at 12%) and \$47,465 (at 27%).⁶⁰ The second graduate would require an annual premium of between \$21,864 and \$57,005, and the third graduate would require between \$25,200 and \$65,702.⁶¹ This analysis suggests that at the low end (and using a conservative discount rate) the cost of graduate legal education imposes a cost of \$18,205 per year on legal services. At the high end that cost is

⁵⁶ *Id.* at 3-7. Schlunk refers to this student as “Also Ran.”

⁵⁷ *Id.* Schlunk refers to this student as “Solid Performer.”

⁵⁸ *Id.* Schlunk refers to this student as “Hot Prospect.”

⁵⁹ *Id.* at 7.

⁶⁰ *Id.* at 11.

⁶¹ *Id.*

could be upwards of \$65,702. Assuming 2,000 hours worked per year, graduate legal education increases the cost of legal service at somewhere between \$9 and \$33 per hour.

Nearly all of this cost would be eliminated by creating a path to the bar via an undergraduate law degree and one year of apprenticeship. Since graduate legal education first requires an undergraduate degree, the cost of the undergraduate degree should be ignored when comparing the two paths. With the undergraduate path, the graduate tuition and fees are entirely eliminated. While the graduate path requires the law student to incur opportunity cost in the amount of three years of forgone salary while attending law school, the undergraduate path would reduce this timeline to one year of apprenticeship. We believe that a graduate from a four year undergraduate law school should not earn substantially less as a legal apprentice than a graduate from any other four year undergraduate program would earn the first year out of school. It is true that an employer would be providing on the job training in the first year, but most employers spend substantial time training new college educated employees to be effective in a professional setting. Thus, if legal apprenticeships paid the same as first year jobs in other professions, there would be zero opportunity cost incurred in our undergraduate plus apprenticeship model. If we accept Schlunk's calculations on the cost of graduate law school, creating an undergraduate and apprenticeship path to the bar could reduce the cost of legal services by \$9 to \$33 per hour.

III. Improving the Quality of Legal Services

Despite the fact that an undergraduate law degree could lower the cost of legal services, some may be concerned that this price decrease would involve a sacrifice in quality. In fact, the opposite is true. Increasing the diversity of paths to the law is likely to lead to an increase in the

quality of legal services. This section will proceed in four parts. First, many, if not most, countries in the world already successfully employ an undergraduate model for legal education, suggesting that an undergraduate option can be adequate. Second, legal services have capably been provided by non-graduate trained lawyers for a large part of American history. Third, even if the average undergraduate trained lawyer were lower in quality than the average graduate trained lawyer, the undergraduate option would still likely improve total quality by expanding the range of services to underserved clients. Finally, the undergraduate option would have dynamic effects, such as increasing the diversity in the legal profession and improving graduate education through increased competition.

A. Undergraduate Degree Programs are the Norm in the Rest of the World

We have very substantial evidence from the rest of the world that our proposal can produce qualified lawyers. In fact, internationally, a mix of undergraduate legal education and apprenticeship is the norm.⁶² In England, upon which the substantial bulk of our legal system was modeled, legal education originally consisted of sitting in court listening to cases and later discussing them.⁶³ Since all lawyers in training were living in inns around Westminster in London, local attorneys would often stop by to lecture, and Inns of Court began to develop.⁶⁴ Education at the Inns of Court consisted primarily of reading treatises, listening to lectures, and participating in moot courts.⁶⁵ Today, legal education in England consists of an undergraduate academic phase, a vocational phase, and an apprenticeship.⁶⁶ The academic phase, which can be

⁶² Schwarzschild, *supra* note 28, at 1.

⁶³ Ralph Michael Stein, *The Path of Legal Education from Edward I to Langdell: A History of Insular Reaction*, 57 CHI. KENT L. REV. 429, 430 (1981).

⁶⁴ *Id.*

⁶⁵ *Id.* at 431.

⁶⁶ See Solicitors Regulation Authority, *Completing the Academic Stage of Training: Guidance for Providers of Recognised Law Programmes* (Aug. 2010), <http://www.sra.org.uk/students/academic-stage.page>; Solicitors Regulation Authority, *Information for Providers of Legal Practice Courses* (May 2009), <http://www.sra.org.uk/students/lpc.page>; Solicitors Regulation Authority, *You and Your Training Contract: What*

completed in three to four years, must include two years of legal study, including three semesters of core coursework.⁶⁷ Candidates may also fulfill the academic phase requirements without a legal undergraduate degree through a combination of conversion courses lasting approximately one year and an examination, or by having substantial experience in the legal field.⁶⁸ After completing the academic requirement, potential solicitors must complete the vocational requirement through a one year Legal Practice Course (LPC).⁶⁹ Upon completion of the LPC, candidates for solicitor must serve a two year paid apprenticeship under a training contract.⁷⁰

Requirements to become a barrister are substantially similar. The academic phase training is identical to that of the solicitor, followed by a vocational component consisting of a one year Bar Professional Training Course (BPTC), and a one year apprenticeship called a

You Need to Know (Jan. 6, 2006), <http://www.sra.org.uk/students/training-contract.page>; Solicitors Regulation Authority, Training Trainee Solicitors: The Solicitors Regulation Authority Requirements (Jan. 8, 2008), <http://www.sra.org.uk/students/training-contract.page>; Solicitors Regulation Authority, Professional Skills Course: Course Structure, Provider Authorisation, and Course Accreditation, <http://www.sra.org.uk/students/training-contract.page>.

⁶⁷ See Completing the Academic Stage of Training, *supra* note 66. The core coursework consists of: criminal law, equity and trusts, law of the European Union, obligations I (contract), obligations II (tort), property/land law, public law (constitutional, administrative, human rights). Legal research training is also required. *Id.* at 5.

⁶⁸ *Id.* at 15-20. Candidates who do not have a law degree can fulfill the academic requirement through a so-called “conversion course.” Candidates who have an undergraduate degree in something other than law may fulfill the academic requirement through the Common Professional Examination (CPE). Students can complete the CPE requirements by studying the seven foundational courses (see above) and one other course. The CPE can be completed in one year, and must be completed within three years. *Id.* at 15-17. Candidates who do not have an undergraduate degree can fulfill the academic requirement if they have sufficient experience and have passed the necessary examinations. This type of student falls primarily into four categories: candidates who have passed the necessary examinations and have sufficient experience as legal executives (essentially paralegals), candidates who have passed the necessary examinations and have sufficient experience as legal clerks, candidates who are over 25 years old and have at least ten years of exceptional work experience, and candidates who have educational backgrounds that are equivalent to undergraduate degrees. *Id.* at 17-20.

⁶⁹ See Information for Providers of Legal Practice Courses, *supra* note 66. The LPC is divided into two phases. In phase I the candidate receives training in: business law and practice, property law practice and litigation, course skills, professional conduct and regulation, taxation, and wills & administration of estates. Phase II consists of three vocational electives. *Id.* at 6.

⁷⁰ See Training Trainee Solicitors, *supra* note 66. During the apprenticeship, the candidate must gain experience in at least three distinct areas of English law, and must complete a professional skill course comprised of: financial and business skill, advocacy and communication skill, and client care and professional standards. *Id.* at 9-15. Apprentices are paid during the training contract (currently the minimum salary in London is 18,590 English Pounds annually). *Id.* at 7.

“pupillage.”⁷¹ In all, training to become a solicitor consists of at least four years of education and two years of paid apprenticeship, while training to become a barrister consists of at least four years of education and one year of apprenticeship. In terms of both time and content, the legal education model that we propose for the United States is substantially similar to the model that England has long successfully employed.⁷²

In Germany, federal law mandates that becoming a lawyer requires completion of both an academic and vocational component.⁷³ The academic requirement consists of obtaining an undergraduate degree in law that may be completed in four years, and is generally paid for by the German state.⁷⁴ After completing the academic requirement German law school graduates must complete a two-and-a-half year vocational training during which they are supported by the German state.⁷⁵ Thus, completing the legal education in Germany requires four years of subsidized academic training and two-and-a-half years of paid vocational training. Further, the

⁷¹ See <http://www.barcouncil.org.uk/CareersHome/TrainingtoBecomeaBarrister/> (listing the three stages of barrister training); <http://www.barcouncil.org.uk/CareersHome/CareersHome/TrainingtoBecomeaBarrister/QualifyingLawDegree/> (describing the requirements of the academic phase); <http://www.barcouncil.org.uk/CareersHome/TrainingtoBecomeaBarrister/BarProfessionalTrainingCourse/> (describing the requirements of the vocational phase); <http://www.barcouncil.org.uk/CareersHome/TrainingtoBecomeaBarrister/Pupillage/> (describing the requirements of the apprenticeship). The BPTC is offered by the Inns of Court and includes: casework skills (case preparation and legal research), written skills (opinion writing and the giving of advice on cases, and drafting of litigation documents), interpersonal skills (conference and interviewing, negotiation, and advocacy), and legal knowledge (civil litigation, criminal litigation, evidence, professional ethics, and two electives). Bar Professional Training Course, *supra* note 71. The pupillage is completed by working under the supervision of an experience barrister. The first six months of the pupillage is spent training, and the second six months is spent practicing under supervision. Pupillage, *supra* note 71.

⁷² It is also worth noting that the barriers to entry imposed by the three year undergraduate education requirement in England are substantially reduced by the fact almost all undergraduate education is entirely state funded. http://en.wikipedia.org/wiki/Education_in_England#Higher_education.

⁷³ Hans Leser, *Legal Education in Germany*, in *Pressing Problems in the Law Vol. 2: What are Law Schools For?* 91, 91 (Peter Birk ed., 1996).

⁷⁴ *Id.* The German state specifies the core subjects that must comprise the university syllabus. These core subjects correspond to the codification of German law, and include civil code, criminal code, commercial code, and the constitution. Although German law requires only four years of undergraduate legal education, most students spend five to six years gaining their undergraduate degree and passing the first state examination. *Id.* One reason why German students might decide to spend so much time getting their undergraduate degree is that university education in Germany is heavily subsidized by the state. See http://en.wikipedia.org/wiki/Education_in_Germany#Tuition_fees (last visited Mar. 5, 2011).

⁷⁵ Leser, *supra* note 73, at 92.

German model is of particular interest because, like our proposal, it consists of multiple paths to becoming a lawyer. Once students complete their undergraduate training, doctoral legal studies are available to students who pass a first state examination. Although doctoral studies are not required, they are highly valued in legal practice.⁷⁶ Thus, like our proposal, the German model allows candidates to become lawyers via undergraduate education, but also provides the market with a choice of graduate trained lawyers.

The practice of law in Asia has not traditionally required a graduate legal education. To be sure, recently Japan, South Korea, and Taiwan have attempted attempt to transition to an American graduate legal education model. In Japan, legal education was historically not required at all. To become a lawyer one needed to pass the bar exam and complete a two year apprenticeship at the Legal Training and Research Institute of the Supreme Court (LTRI).⁷⁷ Although undergraduate universities in Japan offered legal education, these courses were primarily taken by those planning to be businessmen and government bureaucrats. Potential lawyers were more likely to take extensive preparatory courses focused solely on helping them pass Japan's difficult bar exam.⁷⁸ As the Japanese economy continued to expand and become global, the demand for lawyers increased. In 1991 Japan commissioned the Justice System Reform Council to determine how respond to this new demand.⁷⁹

In 2004, Japan passed legislation implementing a graduate law school system and requiring potential Japanese lawyers to obtain a three year graduate degree in order to sit for the

⁷⁶ *Id.*

⁷⁷ Mayumi Saegusa, *Why the Japanese Law School System was Established: The Mechanisms of Institutional Creation*, Paper presented at the annual meeting of the American Sociological Association 4 (May 5, 2004) (paper available at http://www.allacademic.com/meta/p_mla_apa_research_citation/1/0/3/9/7/p103976_index.html); Daniel H. Foote, *Justice System Reform in Japan* 15-16, <http://www.reds.msh-paris.fr/communication/docs/foote.pdf>.

⁷⁸ Saegusa, *supra* note 77, at 4.

⁷⁹ Foote, *supra* note 77, at 1.

new bar exam.⁸⁰ After passing the bar, Japanese lawyers must complete a one year apprenticeship at the LTRI.⁸¹ Paradoxically, the justification for the new legislation was that opening graduate law schools would increase the number of lawyers in Japan.⁸² In 2006, Japan graduated its first class of law school graduates, and in 2010 it terminated the practice of allowing candidates without JDs to take the traditional bar exam.⁸³ Perhaps not surprisingly, requiring graduate law school has not been the miracle cure for the shortage of Japanese lawyers. Although the Justice System Reform Council had stated a goal of increasing the number of lawyers in Japan by 3,000 by 2010, as of 2008 it appeared that Japan would fall well short of this goal.⁸⁴ Despite a nationwide campaign to encourage applicants to law school, and the promise that bar passage rates would dramatically increase, Japan has continued to keep bar passage rates relatively low, restricting the supply of new lawyers.⁸⁵

South Korea is currently in the midst of legal reform as well. Traditionally, upon obtaining an undergraduate law degree, South Koreans were eligible to take the bar exam. Upon passing the bar exam they were required to complete two years of practical training at the Judicial Research and Training Institute (JRIT).⁸⁶ In 2007, however, South Korea passed the Law School Act. This Act decreed that legal education and training would be done on a model similar to the United States. Graduates of a three year graduate program would be eligible to sit for the bar. Korean graduate law school began operating in 2009 and will graduate their first

⁸⁰ *Id.* at 7.

⁸¹ *Id.* at 21.

⁸² *Id.* at 2; Saegusa, *supra* note 77, at 9; Norimitsu Onishi, *In Rural Japan, a Shortage of Lawyers*, N.Y. TIMES (Jul. 29, 2008), http://www.nytimes.com/2008/07/29/world/asia/29iht-japan.1.14856390.html?_r=2.

⁸³ http://www.nichibenren.or.jp/en/about/attorney_system.html (“Under the old system, anyone could take the bar examination, but this system will end in 2010.”).

⁸⁴ Onishi, *supra* note 82; Colin P. A. Jones, *Law School Come Under Friendly Fire*, JAPAN TIMES (Jan. 29, 2008), <http://search.japantimes.co.jp/cgi-bin/fl20080129zg.html>.

⁸⁵ *Id.* This phenomenon is supported by the Japanese bar associations, which continue to stress that competition for clients would be ruinous to the legal profession. *Id.*

⁸⁶ <http://www.koreanbar.or.kr/> (translated via Google translator) (last accessed Jan. 10, 2011).

classes in 2012.⁸⁷ Until 2017, South Korea plans to run concurrent models (similar to our proposal) under which graduates from both undergraduate and graduate programs are eligible to take the bar.⁸⁸

Some might suggest that this shift to a graduate model in Asia is a sign that the rest of the world views the current U. S. graduate model as superior. We disagree. First, the shift in Asia towards a graduate education model likely reflects the goals of the organized bar rather than the needs of consumers. Public choice theory teaches that concentrated groups, like the organized bar, tend to benefit in the legislative and regulatory process over diffuse groups, like consumers. Thus, one cannot conclude that the undergraduate model is inadequate because a few nations are moving to a graduate model. They may simply illustrate the gains made by concentrated bars over legal consumers. Second, the United States has the most dynamic private undergraduate sector in the world, which may make it better qualified to provide this service at the undergraduate level than other nations. Thus, we do not feel that the developments in Asia offer evidence that an undergraduate option would not be valuable.⁸⁹

To be clear, we are not arguing that the undergraduate model necessarily provides lawyers who are on average as well trained as the graduate model. We do not have comparative data on this issue. But the evidence from abroad shows that this lower-cost model is adequate to producing lawyers for many purposes. We think that once an adequate floor of competence is

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ It might be suggested that if undergraduate legal education is valuable and available abroad, American students should already be going to foreign nations to get it. But foreign legal education is not a generally attractive option for Americans. A foreign legal education will be of little practical use in many American jurisdictions. Twenty-three states require a degree from an American law school to sit for the bar exam. <http://www.internationalstudent.com/study-law/ny-bar-foreign-lawyer.shtml> Students are often unsure, particularly at college age, where they want to practice. Moreover, for Americans the domestic undergraduate experience has value for the networking opportunities it provides—both professional and personal. The connections made at a foreign university have less value because they do not lead to opportunities here at home. Finally, college provides a consumption good which many will enjoy less if they have to uproot themselves and go to an unfamiliar country. Consistent with this analysis only a tiny fraction of Americans go abroad for any kind of undergraduate degree.

reached, the market, not a regulatory requirement that imposes a timeline on legal education, should sort out which lawyers are best suited for which tasks.

B. The Provision of Legal Services in American History

Until well into the 20th century, the United States also trained practicing lawyers without graduate education.⁹⁰ In the early colonies, all American lawyers had been trained at the Inns of Court in England.⁹¹ Early attempts to introduce academic education into the law failed, as lawyers demanded practical education.⁹² Thus, early American lawyers trained in one of four ways: 1) go to England and learn at the Inns of Court, 2) self-teach using law books, 3) serve as an assistant in a government/judicial office, 4) apprentice for a practicing lawyer. Of these methods, the clerkship/apprenticeship model was the most popular, and the apprenticeship period lasted anywhere from four to seven years.⁹³

It was not until the 1780s that law schools began to come into existence. Thomas Jefferson, newly elected governor of Virginia, established a professorship of law and police at the College of William & Mary, and installed George Wyeth to the position in 1779.⁹⁴ A handful of others followed over the next decade, including Harvard and Yale. Instruction at these fledgling law schools initially lasted from 14-18 months.⁹⁵ Throughout the remainder of the 18th and 19th centuries, hybrid law schools that were unaffiliated with any university continued to emerge, offering training that lasted from 12-18 months.⁹⁶ These new law schools did not become a requirement to practice law for some time. It was only in the more established

⁹⁰ See *supra* note xx and accompanying text.

⁹¹ Brian J. Moline, *Early American Legal Education*, 42 WASHBURN L.J. 775, 778 (2004).

⁹² *Id.* at 779.

⁹³ *Id.* at 780-84.

⁹⁴ *Id.* at 792-93.

⁹⁵ *Id.* at 796.

⁹⁶ *Id.* at 795-97.

and heavily populated eastern cities that any real restrictions on practicing law took hold. The further west one went into less populated areas, the less restriction there was on practicing law.⁹⁷ For example, in 1851, Indiana still allowed anyone with “good moral character” to practice law, and Kansas did not begin to require a standardized exam until 1903.⁹⁸ By 1900, less than half of the attorneys practicing in America had any college education at all.⁹⁹ Of the law schools in operation, less than half had a minimum age requirement and only seven required a high school diploma to enter.¹⁰⁰

Only in the late 19th century did state bar associations begin to push for three year graduate degrees.¹⁰¹ In 1921, the American Bar Association (ABA) began developing accrediting standards, and urging states not to allow attorneys to sit for the bar exam unless they had graduated from an accredited law school.¹⁰² Because the ABA only represented about 10% of practicing lawyers at this time its efforts to lobby the states were largely unsuccessful.¹⁰³ While the ABA argued that the licensing restriction was necessary for consumer protection, not all of its members shared the same motives. In the early 1900s, following large scale immigration to America, many ethnic minorities had begun to practice law. Many members of the ABA were concerned about the growing number of minority lawyers and desired to keep them from the practice.¹⁰⁴ Since minority lawyers attended part time law schools in disproportionately high numbers, these ABA members felt they could restrict minority entry into

⁹⁷ Stein, *supra* note 63, at 444.

⁹⁸ Moline, *supra* note 91, at 798-901.

⁹⁹ *Id.* at 801-02.

¹⁰⁰ *Id.*

¹⁰¹ See, e.g., Pennsylvania Bar Association, *Legal Education*, 44 AM. L. REGISTER & REV. 361 (1896).

¹⁰² Fossum, *supra* note x, at 516-17.

¹⁰³ *Id.* at 520.

¹⁰⁴ See BRIAN TAMANAHA, *FAILING LAW SCHOOLS* xx (2012).

the practice by eliminating part time law school through accreditation.¹⁰⁵ Another scholar has described the push for the accreditation of three year graduate law schools as a struggle between practicing lawyers who wanted to protect their prestige and income and populist democrats who wanted to preserve the opportunities to practice law and the availability of low cost legal services.¹⁰⁶ Despite the questionable motivation behind the proposed restrictions, however, by 1976 the ABA represented over half of practicing lawyers and had lobbied 45 of the 50 states to essentially require bar examinees to have graduated from an accredited law school.¹⁰⁷

This history illustrates that despite the current requirements, America has a long history of producing attorneys without graduate law degrees. Even today, many states recognize that a JD from an ABA accredited law school is not an absolute necessity. Fourteen states will allow a lawyer to practice law if he has graduated from a non-accredited program and has extensive practice experience in another United States jurisdiction.¹⁰⁸ Another seven states will license attorneys that engage in law office study and apprenticeship, although many require at least some coursework at ABA approved schools and none make it practical for an individual to pass the bar in less time than it would take to earn a JD.¹⁰⁹ Twenty-seven states and the District of Columbia

¹⁰⁵ *Id.* at 518. Some of the ABA members were disturbed by the growing ranks of the legal profession and by its changing profile—that is, the increasing number of lawyers from ethnic minorities. They hoped that the ABA adoption of law school accrediting standards would eliminate part-time schools and thereby close that route of entry into the legal profession. *Id.*

¹⁰⁶ Moline, *supra* note 91, at 445. There were conflicting pressures to raise professional standards and, on the other hand, to open practice to more people. The former pressure was exerted by the leaders of the bar who sought to preserve their income and prestige, and, perhaps, the integrity of the bar. The latter position was supported by precepts of Jeffersonian and Jacksonian democracy, but also by the realities of the market. *Id.*

¹⁰⁷ Fossum, *supra* note x, at 522.

¹⁰⁸ AMERICAN BAR ASSOCIATION, COMPREHENSIVE GUIDE TO BAR ADMISSION REQUIREMENTS 2010 10-11 (2010). The states that allow this exception include: Alabama, Alaska, Arizona, Florida, Hawaii, Kentucky, Maine, Missouri, Nevada, New Mexico, New York, Oregon, Pennsylvania, Texas. *Id.* Most states require 3-5 years of practice experience. Some, like Florida and Nevada require ten years, while Maryland does not have a practice requirement. *Id.* at 10-12. A further 11 states will license attorneys that have graduated from programs not explicitly accredited by the ABA, but that meet ABA standards and have been “accredited” by the state regulatory authority. *Id.* at 10-11.

¹⁰⁹ *Id.* California, Maine, New York, Vermont, Virginia, Washington, and Wyoming all allow an alternate route to the bar through a course of law office study apprenticeship. California allows attorneys to sit for the bar if they have four years of law office study, and have passed an examination after their first year that tests them on a number of

will license attorneys that have graduated from foreign law programs not accredited by the ABA.¹¹⁰ All of these states impose additional requirements on foreign law graduates. These requirements may include additional study at ABA accredited law schools (most often one year), education equivalency evaluations and exams, and often extensive practice experience (usually 3-5 years) in a U.S. state or foreign high-court. Many states specify that practice experience must be in a common law jurisdiction.¹¹¹ These exceptions illustrate that there are competent qualified attorneys supplying legal services in the United States that do not have a three year graduate law degree. It is important to note, however, that the states make these exceptions to the ABA law school requirement very difficult to achieve. Not only are these exceptions typically more onerous than a program of undergraduate education and apprenticeship, but they also fail to provide the same easily verifiable level of education quality.

C. Undergraduate option should improve aggregate quality

Even if the undergraduate option were to produce of lawyers of somewhat lower average quality, it would still increase total aggregate quality. The lower cost of legal services would expand the scope of lawyering, thus improving the fulfillment of legal needs that are underserved or not served at all. Moreover, there is little risk that clients could not spot the difference between undergraduate educated lawyers and graduate educated lawyers: they would have

subjects traditionally taught in law school during the first year. Maine allows attorneys to sit for the bar if they have completed 2 years of ABA accredited law school and one year of law office study. New York allows attorneys to sit for the bar if they have completed one year at an ABA accredited law school, and three years of law office study. Vermont allows applicants who have completed three years of undergraduate coursework and four years of law office study to sit for the bar. Virginia requires a bachelor's degree and three years of prescribed study under a supervising attorney. Washington requires a bachelor's degree and four years of prescribed study under a supervising attorney. Wyoming allows an applicant to sit for the bar if they have completed at least one year at an ABA accredited law school and two years of structured law office study.

¹¹⁰ *Id.* at 30-31. Alabama, Alaska, California, Colorado, District of Columbia, Hawaii, Illinois, Kentucky, Louisiana, Maine, Massachusetts, Missouri, Nevada, New Hampshire, New Mexico, New York, Ohio, Oregon, Pennsylvania, Rhode Island, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin.

Id.

¹¹¹ *Id.*

different degrees. Thus, it is unlikely our proposal would lead to substantial reduction of legal quality by exacerbating informational asymmetries between lawyers and their clients.

Under our proposal, lawyers could choose to train by obtaining either an undergraduate law degree and one year of apprenticeship or a traditional graduate law degree. An undergraduate trained lawyer would have a degree with a designation indicating that they had received a four year degree in law, while a graduate trained lawyer would have a degree with a designation indicating that they had received a four year undergraduate degree in a particular area and a three year graduate degree in law.

The differences in these two paths are readily observable and identifiable. First, it would be easy to verify that an attorney had received a graduate law degree.¹¹² Second, consumers could be expected to appreciate the difference between an undergraduate and a graduate degree. The United States has a long tradition of offering both undergraduate and graduate degrees in diverse subjects such as business, education, sciences, and humanities. It seems reasonable to assume that most consumers are aware of this distinction. The consumer could easily discover whether the lawyer had obtained an undergraduate degree in law, or a graduate degree in law accompanied by an undergraduate degree in another subject. Getting such information as well as more general assessments of reputation is ever easier in our information rich world. Consumers who desired high quality service and believed that additional education was correlated with higher quality service could choose to employ graduate educated lawyers. Consumers who desired more basic service and believed that this service could be adequately provided by an undergraduate trained lawyer could obtain this service at a lower cost. Thus, even if turns

¹¹² If undergraduate law programs were created as described *supra* section I, their core legal curriculum would be substantially similar to that of graduate law programs. Therefore, it would seem to follow that the bar associations' accreditation process would be substantially similar in terms of methodology and cost to that of accrediting graduate legal programs.

out that the undergraduate lawyers actually provided a service of lesser quality on average than graduate trained lawyers, the introduction of an undergraduate option would nevertheless raise the quality of legal services by increasing their affordability. Some consumers who had previously been able to afford no legal service would now be in a position to purchase lower cost basic services. For instance, there are likely many services that lawyers currently do not consider it cost effective to provide. Some examples could include services currently offered by lay professionals in the areas of real estate, trusts and estates, and tax.¹¹³ Consumers began to employ lay professionals because they could provide quality service at a lower cost than lawyers. Reducing the cost of legal service through an undergraduate degree path would once again enable lawyers to compete with lay professionals to provide these services.

Pro bono attorneys provide some of these services today. But pro bono representation only serves a small portion of legal needs.¹¹⁴ In any event, relying on pro bono attorneys is no panacea because they often lack experience in the relevant area of law. The way that the current pro bono system works is that practicing attorneys, whose area of expertise likely exists in a different area of law, spend a relatively small percentage of their time on pro bono work. While many of these attorneys are likely talented and dedicated, their lack of experience in the area means they are unlikely to develop a detailed knowledge of, for example, the particular concerns and recurring issues of small business owners or the nuances of the inner workings of the local criminal justice system.

¹¹³ See Vorhees, *supra* note x, at .

¹¹⁴ See, e.g., Gresham M. Sykes, *Legal Needs of the Poor in the City of Denver*, 4 LAW & SOC'Y REV. 255 (1969) ("The voluntary, part-time efforts of private practitioners and the services of legal aid societies using lawyers paid by funds contributed by the local community no longer appear to be sufficient [to provide legal services to low income clients]."); David Rhode, *Critical Shortage of Lawyers for Poor Seen*, N.Y. TIMES, Dec. 12, 1999, available at <http://www.nytimes.com/1999/12/12/nyregion/critical-shortage-of-lawyers-for-poor-seen.html?pagewanted=all&src=pm> (stating that the shortage of court appointed pro bono lawyers led to many defendants spending six months to one year in jail awaiting trial and many parents unable to contest foster care disputes).

Reducing the marginal cost of providing these legal services would allow some attorneys to specialize in low cost areas of the law. When specialization is possible, quality may increase even as price decreases.¹¹⁵ This effect has already been noted in some areas of the law. For example, many accountants may be able to provide cheaper and higher quality tax advice than generalist attorneys, and many trust officers may be able to provide cheaper and more effective administration of estates.¹¹⁶ Another scholar has suggested that specialization by low cost providers can have a positive impact on the quality of preventative legal services and services to the poor, and argues that the “single-license” system of only licensing generalist graduate educated attorneys has inhibited the optimization of specialized services.¹¹⁷ It is clear that specialization allows for cost effective increases in quality in a given field, and that lowering the cost of providing legal service would enable specialization in more areas of the law.

A further benefit of enabling lawyers to specialize in basic legal services is the enhanced importance of reputation in these fields. The use of pro bono lawyers suppresses reputational signals. First, if a client finds it necessary to employ a lawyer on a volunteer basis, it is very unlikely that he will have many options in choosing his lawyer. Thus, the reputation of the lawyer has little effect on whether he will be engaged by a client in a pro bono assignment. Second, if the lawyer primarily works in complex corporate merger and acquisition work, and takes an occasional small criminal defense case pro bono, his performance in the pro bono case

¹¹⁵ See Muris & McChesney, *supra* note 4, at 190-91.

¹¹⁶ See Voorhees, *supra* note 24, at 1152-53. Further, The training of paralegals must inevitably suggest new methods of educating lawyers. Attorneys who find themselves in competition with paralegals will wonder why three years are necessary to prepare for admission to practice when paralegals may develop their usefulness in six months. Why, again, they may ask, if paralegals can limit their training to a single specialized area, should lawyers be obliged to study legal subjects with which they will never have any encounter in a lifetime of practice? The whole field of specialization is in an unsatisfactory stage of development; and despite intensive promotion and considerable progress, continuing legal education has a great distance to go. Study, innovation, and experimentation are needed in the whole educational field, and the paralegal example could provide the necessary encouragement for future progress. *Id.* at 1164.

¹¹⁷ See Brown, *supra* note 29, at 1181-82.

is likely to have very little impact on his reputation in the merger and acquisition field. Thus, the lawyer has less incentive to provide quality service in the pro bono case. Enabling specialists in the area of low cost legal services would not only make more services affordable to needy clients, but would emphasize the importance of reputation in the marketplace

In short, it may well be that almost all lawyers at top law firms will continue to have J.Ds or other graduate law degrees, but that the undergraduate option will still increase consumer welfare. Similarly, almost all principals at Goldman Sachs and at similar Wall Street enterprises have MBAs and many have doctorates in various disciplines. Yet other businesses across the country benefit from employees with only undergraduate degrees in business. The same is likely true of law. Everyone agrees that the most underserved groups are the poor and middle class. Their usual needs, while often too complex for non-lawyer handling, generally do not require the same level of human capital as securitization deals or complex litigation. Thus, even if some law requires a kind of knowledge that only graduate school can provide, other law does not. Moreover, lawyers can work under the supervision of those with specialized training or call on those with such training as needed. Law is multifarious, and methods for producing lawyers should be more multifarious as well.

Even if many of those who take the undergraduate option work in more modest enterprises or under greater supervision than those with J.D. degrees, it would be a mistake to use the kind of degree received to restrict the functions of any who have passed the bar. Given that overlap in the material imparted in the undergraduate and graduate degrees and the overlap in the ability of graduates of different programs, the holders of different degrees can be expected to compete with one another. Even now some lawyers who have graduated at the bottom of the class from lower ranked schools learn on the job and thrive in practice. Creating a regulatory

division between undergraduate and graduate lawyers would create another artificial barrier to competition.

D. Dynamic Effects of Introducing an Undergraduate Model

In the concluding portion of this section we discuss the dynamic positive effects of the introduction of more educational variety on the diversity of the legal profession, on career mobility, and on legal education itself.

1. Increasing Diversity in the Legal Profession

Creating an undergraduate law degree would create more opportunities for socioeconomically disadvantaged individuals in the legal profession, thereby increasing both the diversity of the legal profession and the availability of legal services to racial and ethnic minorities. Currently the legal profession suffers from a lack of diversity. While Caucasians comprise only 69% of the overall population, they represent almost 90% of the legal profession.¹¹⁸ Meanwhile, African-Americans comprise over 12% of the United States population, but less than 4% of the legal profession; Hispanics comprise over 12% of the United States population, but just over 3% of the legal profession.¹¹⁹ A 2010 report by the ABA stated that “[T]he legal profession is less racially diverse than most other professions, and racial diversity has slowed considerably since 1995.”¹²⁰ This lack of diversity has negative

¹¹⁸ Conrad A. Johnson, The State of the Legal Pipeline 1, 2-3 (2011) (unpublished manuscript) (on file with author) (citing the 2000 United States census).

¹¹⁹ *Id.*

¹²⁰ REPORT OF THE ABA PRESIDENTIAL DIVERSITY INITIATIVE, DIVERSITY IN THE LEGAL PROFESSION: THE NEXT STEPS 11 (2010), available at <http://new.abanet.org/centers/diversity/PublicDocuments/Next%20Steps%20Final-Virtual%20Accessible%20042010.pdf>.

implications for access to justice for minorities because minority lawyers disproportionately serve minority clients.¹²¹

Creating an undergraduate law degree would likely improve diversity in the legal profession. Not only is it more difficult for socioeconomically disadvantaged students to afford law school, but a study by Timothy Clydesdale found that it was more difficult for socioeconomically disadvantaged students to get admitted to law school.¹²² It has long been recognized that socioeconomic disadvantage is strongly correlated with ethnic and racial minorities.¹²³ This finding is affirmed by the statistics of law school diversity. Minority students make up less than 22% of the law school population. African-American students represent 7.2%, while Hispanic students represent 8.2%.¹²⁴ In contrast, minority populations are substantially better represented at undergraduate institutions. Over 32% of the students in undergraduate universities are racial or ethnic minorities; of these over 13% are black and over 11% are Hispanic.¹²⁵ Due to the greater amount of diversity at undergraduate institutions, creating an undergraduate law degree could be expected to improve diversity in the legal profession and thus access to legal services for racial and ethnic minorities.

An undergraduate path to the law could also be expected to increase gender diversity as well. While the majority of students that matriculate to an undergraduate university are likely to be recently graduated from high school, the students that matriculate to law school are significantly older due to the fact that they must first obtain an undergraduate degree. Of

¹²¹ Timothy T. Clydesdale, *A Forked River Runs Through Law School: Toward Understanding Race, Gender, Age, and Related Gaps in Law School Performance and Bar Passage*, 29 LAW & SOC. INQUIRY 711, 716 (2004).

¹²² *Id.* at 755.

¹²³ *Id.* (“[S]ignificant associations exist between socioeconomic status and race.”); Anne Allen, *Taxonomy of Higher Education Barriers and Interventions for Minority and Low-Income Students*, 1 J. BLACK STUDIES 357, 359 (1971) (“Most minority group students are also low-income students.”); Ruby Z. Afram, Note, *Civil Rights, Antitrust, and Early Decision Programs*, 115 YALE L.J. 880, 897 (2006) (citing a study showing that university early decision programs discriminated against socioeconomically disadvantaged and minority groups).

¹²⁴ Johnson, *supra* note 118, at 7-8.

¹²⁵ *Id.* at 6.

students matriculating to law school in 2009, 48% were between the ages of 22-24, 29% were between the ages of 25-29, and 18% were 30 or older.¹²⁶ In the United States the average age at marriage is 27.5 for men and 25.6 for women.¹²⁷ The average age at which a woman has her first child is 25.¹²⁸ Individuals who have already married and started a family will be less able to put their careers on hold to return to school for three years. Thus, many talented individuals who would otherwise make great candidates for the legal profession likely never consider it. This unfortunate reality is especially true of women, who often bear the larger burden of child rearing. Creating an undergraduate law degree, will create a larger pool of talented candidates to draw from, and will enable more women to enter the profession. In addition, while graduate law school likely benefits from the reflection and maturity of older candidates, bringing younger candidates into the profession could increase diversity by increasing representation of the viewpoints and interests of a younger demographic.

2. More Experience in the Marketplace

Undergraduate trained lawyers will accumulate real legal experience much sooner than graduate trained lawyers. The initial reaction of many people to the proposal of an undergraduate law degree may be to compare a mature, circumspect graduate trained lawyer to one fresh out of college. This comparison would be unfair. The more appropriate comparison would be to compare the two lawyers at the time the graduate trained lawyer receives his JD. At this point the graduate trained lawyer would have four years of undergraduate liberal arts education and three years of graduate legal education. The undergraduate trained lawyer would

¹²⁶ LAW SCHOOL ADMISSIONS COUNCIL, ANALYSIS OF LAW SCHOOL APPLICANTS BY AGE GROUP 3 (2010), available at <http://www.lsac.org/LSACResources/Data/PDFs/Analysis-Applicants-by-Age-Group.pdf>.

¹²⁷ Press Release, Department of Economic and Social Affairs, Population Division, World Marriage Patterns 2000, U.N. Press Release DEV/2251 (Jun. 15, 2000).

¹²⁸ T.J. Mathews & Brady E. Hamilton, *Delayed Childbearing: More Women Are Having Their First Child Later in Life*, 21 NAT'L CTR. HEALTH & HUMAN SERVS. DATA BRIEF 1 (Aug. 2009).

have four years of undergraduate liberal arts and legal education and three years of practicing legal experience (one year of apprenticeship plus two years of unsupervised practice). While the graduate trained lawyer may have more time for educational reflection and theoretical instruction, the undergraduate trained lawyer will have substantially more practical legal experience. This experience includes such things as: client interviewing, negotiating, litigation, experience with court filings, civil procedure, and the rules of evidence, contract drafting, crafting legal arguments and briefs, making oral arguments, knowledge of the workings of the local justice system, relationships with other practicing attorneys, time management, experience with local judges and court staff, conducting depositions, administrative representations, experience with local politics and reporting, and working knowledge of local laws. While graduate trained lawyers offer consumers the opportunity to employ a lawyer that may have significant theoretical training in the law, undergraduate trained lawyers offer consumers the choice of substantially greater practical experience. Further, undergraduate trained lawyers would accelerate the aggregate amount of practical legal experience in the profession.

3. Cheaper Mistakes and Greater Career Mobility

An undergraduate law degree would lower the cost of finding the right career. First, it is important to note that a lawyer cannot really know that a legal career is right for him until he has a few years of experience in practice. By this point, he has incurred up to \$280,000 in graduate tuition and opportunity costs.¹²⁹ He is likely to have law school debt approaching \$100,000,¹³⁰ and in some cases his debt may exceed \$200,000.¹³¹ Large amounts of graduate debt present two related issues. One, this debt load could be absolutely ruinous to a lawyer who finds that practicing law is not the right career. Second, even a lawyer who finds that he enjoys the

¹²⁹ See *supra* text accompanying note 59.

¹³⁰ See *supra* text accompanying notes 48-49.

¹³¹ See *supra* note 44.

practice of law may be substantially constrained in his choice of practice by such a large amount of debt. Many potential areas of practice, such as representing indigent clients or start up small businesses, providing basic legal services, working in government, or doing public interest work might not provide him with enough income to meet his substantial debt. An undergraduate degree and apprenticeship on the other hand has the potential to reduce the cost of legal education by up to \$280,000. This reduction would not only mean that he was penalized less for making the wrong career choice, but many more potentially satisfying career options would be open to him. Opening up more career choices for attorneys means a greater variety of services for consumers.

Second, an undergraduate path to the bar would allow the lawyer to get practical experience in the legal field much sooner. Those who recognize early that law is not their best option enjoy greater flexibility in pursuing and investing in other career training or further education. An undergraduate trained lawyer who decides after a year of apprenticeship that he does not want to practice law might go back to school for an MBA for instance. Making this switch on an undergraduate timeline makes it more likely that he will be able to make this decision before marriage, starting a family, investing in a home. The undergraduate trained lawyer who relishes the law also gains through the opportunity to get experience in particular areas of law and plan his career path. By the time a graduate trained lawyer receives his JD, an undergraduate trained lawyer may have gained through experience a solid idea of the area of law he wants to practice in and begun building expertise. Early practice as an undergraduate trained lawyer also leaves open the possibility that a lawyer who decides to make the legal profession a career will return to school to get a specialized LLM, just as graduates from undergraduate business programs may later return to school for an MBA.

Finally, it is worth noting that the large amount of graduate law school debt has the potential to lock some dissatisfied lawyers into a legal career. Although by the time they begin to practice law the cost of legal education is a sunk cost that should not influence future choices, a high level of debt may limit the choices of lawyers due to cash flow or credit concerns. To the extent that a lawyer has used all of his available funds or tapped out his sources of loan financing to obtain a law degree, his training and education options and thus his mobility to move to a career with similar earning potential may be limited. While the lawyer may identify other career fields with greater potential for satisfaction than the law, without additional education or training those fields might not offer a comparable enough salary to induce him to switch. In this way, the high debt load of a graduate law degree might lock dissatisfied lawyers into the legal profession. Dissatisfied lawyers are likely to provide lower quality client service.

4. Improving the Quality of Law School

We believe that if regulatory barriers to undergraduate education were lifted there would be a varied supply response. Some universities that have law schools might open an undergraduate program, redeploying resources used for graduate programs. This option might be attractive to some lower ranked schools that are having difficulty attracting students at the graduate level. Providing an undergraduate degree would be a substantial price cut, because it would reduce opportunity costs. Some other universities or colleges without law schools but with strong programs in criminal justice, jurisprudence or related subjects are likely experiment with granting an undergraduate law degree because that degree would be more valuable as a ticket to sit for the bar. Such a response itself would create a greater diversity of approaches to delivering a legal education. But the long run dynamic effects on improving legal education are likely to be greater than the immediate supply side response.

First, because an undergraduate major would be situated within a college of arts and sciences, it would be easier to provide an interdisciplinary education, mixing elements of social science and humanities with legal doctrine. Law demands fluency in many such disciplines. For instance, the merits of a mass torts case may turn on statistical inferences. Students could integrate relevant courses in statistics, economics and psychology into their undergraduate program rather than trying to catch up in law school. Thus, an undergraduate legal education has the potential to produce better rounded, more capable lawyers.

Second, sanctioning an undergraduate path to the law would create competition for three year graduate law schools. It is widely acknowledged that the third year of graduate law school is of debatable value.¹³² Because there are hundreds of law schools we would expect to see vigorous competition concerning this third year. The reality is that there is hardly any.¹³³ Although a small handful of schools such as University of Dayton¹³⁴ and Northwestern University¹³⁵ have initiated two year programs, the cost of these programs is the same as the

¹³² See, e.g., Associated Press, *Third-Year Law School: Jury's Out on Its Value* (Aug. 10, 2005) (describing student cynicism of the value of a third year of law school and lack of full participation in the third year), available at http://www.msnbc.msn.com/id/8901797/ns/us_news-education/; Press Release, Indiana University, Third-Year Law Students Slack Off, National Survey Says (Jan. 3, 2006) (describing a 2005 Law School Survey of Student Engagement report); Brian Lauter, *3L Thinks 3L Year May Just Be a Moneymaker*, THE SHARK: A CAL LAW BLOG (Sep. 24, 2008, 2:34PM) (describing the third year of law school as a “windfall for law schools, and a waste of money for law students”), <http://theshark.typepad.com/weblog/2008/09/31-thinks-3l-ye.html>; Laura I. Appleman & Daniel Solove, *Abolish the Third Year of Law School?*, LEGAL AFFAIRS: THE MAGAZINE AT THE INTERSECTION OF LAW & LIFE (Sep. 23, 2005, 11:42AM) (debating the merits of the third year of law school), http://www.legalaffairs.org/webexclusive/debateclub_2yr0905.msp; *The Law School Series: Law School is Big Business*, THE AVID PENGUIN (Sep. 17, 2008) (“The third year of law school is damn near worthless.”); Gregory W. Bowman, *Is the Third Year of Law School a Waste of Time and Money?*, LAW CAREER BLOG (Jan. 5, 2006, 8:48PM) (citing the 2005 Law School Survey of Student Engagement study that found little skill development in many areas during the third year of law school), <http://law-career.blogspot.com/2006/01/is-third-year-of-law-school-waste-of.html>.

¹³³ See, e.g., Morris & Henderson, *supra* note 46, at 1 (“There is little reason for legal education to look the same everywhere, yet the differences in methods among ABA accredited schools are minute at best.”).

¹³⁴ Associated Press, *Third-Year Law School: Jury's Out on Its Value* (Aug. 10, 2005) (stating that the University of Dayton offers a two year JD for the same price as a three year JD), available at http://www.msnbc.msn.com/id/8901797/ns/us_news-education/.

¹³⁵ Dan Slater, *Law School in Two Years (Same \$\$?) – Assessing Northwestern's Program*, WSJ LAW BLOG (Jun. 20, 2008, 11:06AM) (describing the Northwestern University two year JD as costing the same as the three year JD), <http://blogs.wsj.com/law/2008/06/20/law-school-in-2-years-same-price-assessing-northwesterns-program/>.

three year program. Creating undergraduate law programs would provide a less expensive alternative for obtaining a law degree, and would likely gain market share from graduate programs. This competition would force graduate programs to reevaluate their curriculums and the value provided by the third year. Competition in the market for legal education could be expected to improve the value of legal education while reducing the cost

Some critics of our proposal may respond that increased competition threatens the “public good” supplied by the law. These arguments are likely to take two forms. First, that graduate trained lawyers produce positive externalities through the production of useful precedent, by performing a public watchdog function, or by being responsible citizens in general.¹³⁶ Second, that graduate law schools themselves produce positive externalities through the production of knowledge through legal scholarship.¹³⁷ What these arguments must show is not that graduate lawyers or law schools provide public good—for surely they do—but rather they must make the case that they provide more public good than a model that includes undergraduate education and apprenticeship, and sufficiently more to outweigh all of the direct benefits described in this section. But there is no obvious reason to assume that graduate trained lawyers would provide more or better precedent than undergraduate-apprenticed lawyers, or would be more effective watchdogs for the public. Further, because our lower cost model would

¹³⁶ See, e.g., JOHN BELL, *Legal Education*, in THE OXFORD HANDBOOK OF LEGAL STUDIES 901, 901 (Cane & Tushnet eds., 2003) (education enables individuals to act in a critical and responsible manner); WILLIAM TWINING, *Postgraduate Legal Studies: Some Lessons of Experience*, in REVIEWING LEGAL EDUCATION 93, 95 (Peter Birk ed., 1994) (graduate trained lawyers are likely to be more mature and motivated).

¹³⁷ See, e.g., Peter Birks, *Editor's Preface*, in Pressing Problems in the Law Vol. 2: What are Law Schools For? v, vii-viii (Peter Birk ed., 1996) (describing law school as “guardians of the public interest” that are an important source of information and commentary in aid of legislative and democratic processes); STUART TODDINGTON, *The Emperor's New Skills: The Academy, the Profession, and the Idea of Legal Education*, in PRESSING PROBLEMS IN THE LAW VOL. 2: WHAT ARE LAW SCHOOLS FOR? 69, 72 (Peter Birk ed., 1996) (arguing that legal education is broader than “training professionals”); PETER BIRKS, *Short-Cuts*, in REVIEWING LEGAL EDUCATION 20, 20h (Peter Birk ed., 1994) (stating that law schools are “guardians of the law’s literature and hence of its deeper rationality, its moral quality, and the directions of its growth”); but cf. ROBERT STEVENS, *Legal Education in Context*, in REVIEWING LEGAL EDUCATION 87, 88-90 (Peter Birk ed., 1994) (finding monopoly, rather than public good, to be the primary motivation for requiring graduate legal education).

increase the supply of practicing lawyers, it would provide a greater amount of useful precedent, public monitoring, and the like.

The most compelling example of a public good externality produced by lawyers is their ability to efficiently utilize and interact with the court system. The courts provide a forum in which to litigate that is funded through public resources. When a case is well pled and well litigated, the court can focus on its core mission—deciding cases and dispensing justice. When incompetent or undertrained lawyers interact with the court, however, the court is forced to spend time addressing improper pleadings, attending to procedural mistakes, or responding to frivolous arguments. The time that the court must spend on these issues reduces the amount of court resources available to decide cases and dispense justice. There is thus a compelling public goods argument for requiring a baseline level of competence that ensures lawyers are less likely to waste the court’s resources.¹³⁸ Our proposal, which includes a year of practical apprenticeship that encompasses pleading and litigation practice, does not seem less suited to providing this public good.

Opponents of our model might also argue that introducing competition not just among lawyers, but among law schools, will reduce the ability of law schools to fund the research and scholarship of their professors, thus depriving the public of this valuable commentary. There is no doubt that the public does benefit from access to a healthy amount of scholarship and advocacy on legal issues. Arguing against competition, however, would require one, as an initial matter, to show that a change to the current model would necessarily result in the loss of valuable

¹³⁸ See Benjamin Hoorn Barton, *Why Do We Regulate Lawyers?: An Economic Analysis of the Justifications for Entry and Conduct Regulation*, 33 ARIZ. ST. L.J. 429, 450-52 (2001) (“[S]ome level of entry regulation to guarantee that the bulk of practitioners appearing before courts are trained in procedural and pleading guidelines is justified.”). In an argument that is largely consonant with the theme of this paper, Barton goes on to state that the current legal education model is both excessive and poorly tailored to providing the type of practical training necessary to efficiently interact with the courts. *Id.* at 451-52.

scholarship—in other words, that the current production of legal scholarship is an efficient process. Certainly scholarship is quite expensive to produce¹³⁹ and yet a substantial amount of scholarship is very rarely cited.¹⁴⁰ Thus, to argue that our model poses a threat to the public good from the loss of research and scholarship, one would first need to make the case that the public is currently receiving a benefit commiserate with the cost of these articles. Moreover, there is no reason to believe that at least some scholarship would originate from professors at undergraduate disciplines. Arts and science professors currently produce substantial scholarship in a wide range of disciplines.

IV. Why Not License Everyone to Practice Law?

Thus far we have argued that licensing lawyers with an undergraduate law degree and a year of apprenticeship would benefit both the cost and quality of legal services. Importantly, our argument is not a call for the complete or immediate deregulation of the legal profession. The debate over the wisdom of professional regulation is not new. A 2000 study sought to empirically measure the impact of more stringent education and training licensing requirements on the quality of dentistry though measuring outcomes in states with differing licensing requirements.¹⁴¹ The study revealed no evidence that increased licensing requirements led to improved quality, fewer complaints, or decreased malpractice premiums.¹⁴² Heightened licensing requirements did, however, lead to slower growth in the number of dentists in the state, higher prices for dental services, and higher hourly earnings for dentists.¹⁴³

¹³⁹ Karen Sloan, *Legal Scholarship Carries a High Price Tag*, NAT'L L.J.

¹⁴⁰ See Tamanaha, *supra* note x, at x.

¹⁴¹ Morris M. Kleiner & Robert T. Kurdle, *Does Regulation Affect Economic Outcomes? The Case of Dentistry*, 43 J.L. & ECON. 547 (2000).

¹⁴² *Id.* at 549.

¹⁴³ *Id.*

Still, there are many who argue that regulation and licensing have the potential to increase consumer welfare,¹⁴⁴ Regulation and licensing are justified based on consumer protection. The need for consumer protection arises in cases of market failure, often as a result of information asymmetry between buyers and sellers in the market. Thus, regulation and licensing are most likely to be helpful in markets that demonstrate significant information asymmetry. The market for legal services often possesses the characteristics that make a market susceptible to information asymmetry. Information asymmetry favoring the seller is most likely to exist in markets where the quality of a good or service cannot be observed until after it is purchased, where it is purchased infrequently, and where there is a large variance in quality.¹⁴⁵ Unlike a product that the consumer can examine and evaluate prior to purchasing, legal services must be purchased and experienced in order to evaluate their quality. Unlike simple services, many consumers may be unable to accurately assess the quality of legal services even after they receive them due to their inability to forecast all of the potential outcomes or accurately assign a probability and magnitude to these outcomes. Further, many purchasers of legal services may be “one shot” purchasers who consume legal services very infrequently.¹⁴⁶ Finally, there is a large

¹⁴⁴ See, e.g., MICHAEL PERTSCHUCK, REVOLT AGAINST REGULATION: THE RISE AND PAUSE OF THE CONSUMER MOVEMENT (1982) (arguing that regulation can favor consumer interests); STEVEN KELMAN, MAKING PUBLIC POLICY: A HOPEFUL VIEW OF AMERICAN GOVERNMENT (1987) (arguing that there is reason to believe that government regulation of economic activity is beneficial); Kenneth J. Arrow, *Limited Knowledge and Economic Analysis*, 64 AM. ECON. REV. 1, 8 (1974) (describing how government intervention or professional ethics codes are often used to combat market failures); George A. Akerloff, *The Market for Lemons: Quality Uncertainty and the Market Mechanism*, 84 Q.J. ECON. 488, 488 (1970) (stating that in some cases, government intervention in markets can increase welfare of all parties); Hayne E. Leland, *Quacks, Lemons, and Licensing: A Theory of Minimum Quality Standards*, 87 J. POL. ECON. 1328, 1342 (1979) (suggesting that there is sometimes a justification for minimum licensing standards in cases of information asymmetry).

¹⁴⁵ Aidan R. Vining & David L. Weimer, *Information Asymmetry Favoring Sellers: A Policy Framework*, 21 POL’Y SCI. 281, 285 (1988); Phillip Nelson, *Information and Consumer Behavior*, 78 J. POL. ECON. 311, 320 (1970); Jack Ladinsky, *The Traffic in Legal Services: Lawyer Seeking Behavior and the Channeling of Clients*, 11 LAW & SOC’Y REV. 207, 215-17 (1976)..

¹⁴⁶ Certainly this is not true of all consumers of legal services. See *supra* note 18.

variation in quality across lawyers. Therefore, the market for legal services has the characteristics of a market that is susceptible to information asymmetry.¹⁴⁷

To make the claim that all licensing restrictions should be removed, therefore, one would have to argue that the increase in consumer welfare outweighed the loss in consumer welfare attributable to the increase in information asymmetry likely to occur. Our more modest alternative avoids that problem by proposing a solution that would increase consumer welfare without increasing information asymmetry. Reducing licensing restrictions to allow undergraduate trained lawyers to practice law would lead to an increase in consumer welfare through lower cost legal services¹⁴⁸ and a number of quality improvements.¹⁴⁹ This proposal could be implemented without increasing information asymmetry for two reasons. First, it would not appreciably raise the cost to the ABA of verifying the credentials of lawyers. Law degrees would still be granted by accredited educational institutions. Thus, assuming that accreditation is a necessary quality check, programs will still receive this seal of approval and ABA can still be part of the process. Thus, the proposal is conservative in that it uses existing frameworks by which our society decides that educational institutions are worthy of granting degrees for a particular purpose.

Second, it would not appreciably raise the cost to consumers of understanding and analyzing the information. The distinction between an undergraduate degree and a graduate degree is one that has a long historical tradition in the United States and is well known to consumers. Our proposal, by increasing consumer welfare while not adding substantially to the

¹⁴⁷ See, e.g., Baldwin et al., *supra* note 17, at 792; Ladinsky, *supra* note 145, at 215-18 (not only is there uncertainty about the outcome of legal work, but clients have difficulty procuring useful evaluative information); Jack R. Bierig, *Whatever Happened to Professional Self-Regulation?*, 69 A.B.A. J. 616 (1983) (lay clients without specialized information are unable to evaluate the judgments that professionals make).

¹⁴⁸ See text accompanying notes 15-61.

¹⁴⁹ See text accompanying notes xx.

information asymmetry between lawyer and client, creates what amounts to an arbitrage opportunity for consumer welfare gains.

Conclusion

In this essay we have argued that states should license attorneys who have completed a four year undergraduate law degree and a one year apprenticeship. The current system, in which nearly all states require the equivalent of a graduate law degree,¹⁵⁰ places law school graduates deeply in debt and imposes large costs on the price of legal services. By eliminating three years of graduate level tuition and the opportunity cost of forgoing three years of professional employment, our proposal would reduce the marginal cost of supplying legal services which would lead to a reduction in the price of many legal services and an increase in allocative efficiency. This cost reduction could be accomplished while at the same time increasing both the quality and diversity of legal services, and forcing improvements to both legal education and the law firm hiring process. Further, because this reduction in licensing restrictions could be accomplished without a corresponding increase in information asymmetry in the market for legal services, it provides a relatively risk free way to increase consumer welfare.

¹⁵⁰ See text and notes 101-111.